

1 J. SCOTT GERIEN, State Bar No. 184728
2 MEGAN F. HEALY, State Bar No. 229177
3 DICKENSON, PEATMAN & FOGARTY
4 809 Coombs Street
Napa, California 94559
Telephone: (707) 252-7122
Facsimile: (707) 255-6876

5 Attorneys for Plaintiffs
6 MARK CARTER and CHRISTY CARTER

7 DAVID L. HOFFMAN, State Bar No. 143474
8 LAW OFFICES OF DAVID L. HOFFMAN
28494 Westinghouse Place, Suite 204
Valencia, California 91355
9 Telephone: (661) 775-0300
10 Facsimile: (661) 775-9423

11 Attorneys for Defendant
SOUTH COAST WINERY, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 Mark Carter, an individual, and Christy
16 Carter, an individual

17 Plaintiffs,

18 vs.

19 South Coast Winery, Inc.

20 Defendant.
21
22
23
24
25
26
27
28

CASE NO. C 08-02979 RMW

**STIPULATED MOTION TO SUSPEND
PROCEEDINGS; [PROPOSED] ORDER**

1 The Parties in this action, through their undersigned counsel, hereby submit this
2 stipulated motion to suspend all proceedings in this matter pending the Parties participation in
3 mediation and settlement of the matter, or the outcome of a motion to transfer a parallel action
4 currently pending in the U.S. District Court for the Central District of California involving the
5 same parties and the same issues.

6 The Plaintiffs, Mark and Christy Carter (the "Carters"), have claimed an infringement
7 of their CARTER CELLARS trademark for wine by the use of the trademark CARTER
8 ESTATE for wine by Defendant, South Coast Winery, Inc. ("South Coast"). Following an
9 exchange of correspondence related to the alleged infringement, South Coast filed a
10 declaratory judgment and unfair competition action in the Central District. Believing such
11 action to be a preemptive, the Carters subsequently filed this action in the Northern District.
12 South Coast contests that its Central District action was not merely preemptive and contains an
13 affirmative relief claim and has filed a Motion to Dismiss, Stay or Transfer Under the First-to-
14 file Rule and F.R.C.P. 12(b)(3) in this action in the Northern District.

15 The parties have agreed to pursue preliminary Alternative Dispute Resolution in an
16 effort to settle the cases. Should such ADR fail to resolve the dispute between the Parties, the
17 Carters intend to then submit a motion to transfer the Central District action to the Northern
18 District. South Coast does not agree that any delay in the Carters having bringing a motion in
19 the Central District action is excusable, while the Carters contend otherwise.

20 In the event the Central District declines to transfer the case brought against the Carters
21 by South Coast, the Carters will voluntarily dismiss this action in the Northern District, thereby
22 making South Coast's need to re-calendar its motion in this action moot. Accordingly, in an
23 effort to conserve the Northern District Court's resources, the Parties hereby stipulate and
24 move the Court to suspend the proceedings in this matter and stay all upcoming deadlines,
25 including the scheduled case management conference, pending the parties reaching a
26 settlement through ADR or a decision of the Central District as to whether it will retain the

27 ///

1 action pending there, or transfer it to the Northern District.

2 Dated: __August 20, 2008__

3 Respectfully submitted,

4 DICKENSON, PEATMAN & FOGARTY

5
6 By /s/ J. Scott Gerien

7 J. Scott Gerien

8 Megan F. Healy

9 809 Coombs Street

10 Napa, California 94559

11 Telephone: 707-252-7122

12 Facsimile: 707-255-6876

13 Attorneys for Plaintiff,

14 Mark Carter and Christy Carter

15 LAW OFFICES OF DAVID L. HOFFMAN

16 By /s/ David L. Hoffman

17 David L. Hoffman

18 28494 Westinghouse Place, Suite 204

19 Valencia, California 91355

20 Telephone: (661) 775-0300

21 Facsimile: (661) 775-9423

22 Attorneys for Defendant,

23 South Coast Winery, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: _____

United States District Court Judge